

HOUSE BILL 1088

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11r1944
CF SB 358

By: **Delegate Griffith (Chair, Joint Committee on Pensions)**

Introduced and read first time: February 11, 2011

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Audit Responsibilities – State Department of Education, Maryland Higher**
3 **Education Commission, and State Retirement Agency**

4 FOR the purpose of requiring the county boards of education to conduct certain audits
5 under certain circumstances; requiring certain local school systems to
6 reimburse the State for certain employer contributions for certain employees
7 participating in the Teachers' Retirement System or the Teachers' Pension
8 System; providing that the State Department of Education may authorize
9 certain county boards of education and public libraries to conduct certain
10 audits; authorizing the State Department of Education, rather than the State
11 Retirement Agency, to conduct certain audits of local school systems and public
12 libraries to determine if certain employer contributions have been paid
13 appropriately to the State Retirement and Pension System; clarifying that
14 certain audits conducted by certain groups may be conducted in a certain
15 manner; requiring that reimbursements for certain audits be applied to the
16 State Department of Education, certain county boards of education, the
17 Maryland Higher Education Commission, certain public junior or community
18 colleges, certain public libraries, and the General Fund in a certain manner;
19 requiring certain county boards of education and public libraries to provide
20 certain documentation to the State Department of Education under certain
21 circumstances; providing that the Maryland Higher Education Commission may
22 authorize certain public junior or community colleges to conduct certain audits;
23 authorizing the Maryland Higher Education Commission, rather than the State
24 Retirement Agency, to conduct certain audits of public junior or community
25 colleges to determine if certain employer contributions have been paid
26 appropriately to the State Retirement and Pension System; requiring certain
27 public junior or community colleges to provide certain documentation to the
28 Maryland Higher Education Commission under certain circumstances;
29 clarifying that the State Retirement Agency may perform certain audits of
30 certain participating employers; requiring that if certain audits by the State
31 Retirement Agency reveal certain information, certain actions shall be taken

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and certain payments shall be made to the State Retirement and Pension
 2 System; and generally relating to performing audits of local school systems,
 3 public junior or community colleges, and public libraries for purposes of
 4 determining if employer and member contributions have been paid
 5 appropriately to the State Retirement and Pension System.

6 BY repealing and reenacting, with amendments,
 7 Article – Education
 8 Section 5–109, 5–203, 16–306, and 23–504
 9 Annotated Code of Maryland
 10 (2008 Replacement Volume and 2010 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article – State Personnel and Pensions
 13 Section 21–121
 14 Annotated Code of Maryland
 15 (2009 Replacement Volume and 2010 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Education**

19 5–109.

20 (a) **(1)** Each county board shall provide for an annual audit of its financial
 21 transactions and accounts.

22 **(2) AT THE REQUEST OF THE DEPARTMENT, A COUNTY BOARD**
 23 **SHALL CONDUCT AN AUDIT UNDER § 5–203 OF THIS TITLE.**

24 (b) (1) The audit shall be made by a certified public accountant or a
 25 partnership of certified public accountants who are:

26 (i) Licensed by the State Board of Public Accountancy; and

27 (ii) Approved by the State Superintendent.

28 (2) The audit shall be made in accordance with the standards and
 29 regulations adopted by the State Board.

30 (c) (1) The results of the audit, including the letter of recommendation
 31 submitted by the auditor, are a matter of public record.

32 (2) The results shall be reported within 3 months after the close of the
 33 fiscal year for the county board on the form and in the manner required by the State
 34 Board to:

- 1 (i) The State Superintendent;
- 2 (ii) The county fiscal authority;
- 3 (iii) The Joint Audit Committee of the General Assembly;
- 4 (iv) The Senate Budget and Taxation Committee;
- 5 (v) The Senate Education, Health, and Environmental Affairs
6 Committee;
- 7 (vi) The House Appropriations Committee; and
- 8 (vii) The House Committee on Ways and Means.

9 (d) In addition to the audit required by this section, the county
10 commissioners or county council may conduct an audit using auditors employed by the
11 county.

12 5-203.

13 (a) **(1)** [In this section, "Agency" means the State Retirement Agency.]
14 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL SCHOOL SYSTEM**
15 **SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS**
16 **MADE BY THE STATE FOR AN EMPLOYEE WHO:**

17 **(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM**
18 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**
19 **PERSONNEL AND PENSIONS ARTICLE; AND**

20 **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**
21 **THAN STATE OR LOCAL AID.**

22 **(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**
23 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE LOCAL SCHOOL**
24 **SYSTEM SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S**
25 **PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY**
26 **A SOURCE OTHER THAN STATE OR LOCAL AID.**

27 (b) (1) [The Agency] **TO ENSURE THAT EACH LOCAL SCHOOL SYSTEM**
28 **IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A)**
29 **OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A**
30 **COUNTY BOARD** may at any time examine the records of local school systems to
31 determine whether the State's payments for retirement contributions for employees of

1 the school systems are in accordance with the provisions of Division II of the State
2 Personnel and Pensions Article.

3 **[(2)** In making the determination under paragraph (1) of this
4 subsection, the Agency shall include as employees eligible for State payment of
5 retirement contributions those employees:

6 (i) Whose salaries are funded by State or local aid, whether
7 general or categorical in nature; and

8 (ii) Who are members of the Teachers' Pension System or
9 Teachers' Retirement System.]

10 **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**
11 **SUBSECTION MAY BE:**

12 **(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL**
13 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

14 **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**
15 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**
16 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

17 **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

18 (c) (1) (i) If an examination of the records of a local school system
19 shows that the State has paid more than is required under Division II of the State
20 Personnel and Pensions Article, within 30 days after the date of the notice to the
21 school system of the State overpayment, the school system may appeal the notice of
22 State overpayment to the Secretary of Budget and Management who shall appoint a
23 hearing examiner who is an attorney.

24 (ii) The hearing examiner shall make recommendations to the
25 Secretary of Budget and Management who shall make a determination regarding the
26 amount, if any, of the State overpayment.

27 (iii) Should a local school system request a transcript of an audit
28 appeals hearing, the local school system shall provide and pay for the production of the
29 transcript.

30 (2) At the request of the Department [of Education] the moneys owed
31 shall be deducted from any other State funds that would otherwise be paid to the
32 school system if:

33 (i) A local school system does not appeal to the Secretary of
34 Budget and Management or to the Office of Administrative Hearings; or

1 (ii) The Office of Administrative Hearings determines that the
2 State is due reimbursement for excess payments as provided in paragraph (3) of this
3 subsection.

4 (3) (i) The local school system may appeal to the Office of
5 Administrative Hearings a determination by the Secretary of Budget and
6 Management regarding the amount, if any, of the State overpayment.

7 (ii) Within 45 days after the close of the hearing record, the
8 Office of Administrative Hearings shall issue a written decision to the parties and may
9 grant any appropriate remedy.

10 (iii) The written decision issued by the Office of Administrative
11 Hearings is the final finding of fact and conclusion of law and binding on all parties
12 and is not subject to judicial review.

13 (d) **(1)** Any reimbursements [which result from audits under this section]
14 **UNDER SUBSECTION (A) OF THIS SECTION:**

15 **[(1)] (I)** Shall be applied first to **THE COST OF ANY AUDIT OR**
16 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**
17 **reimburse EITHER the [Agency] DEPARTMENT OR THE COUNTY BOARD** for the
18 expenses of the audits; and

19 **[(2)] (II)** After reimbursement to the [Agency] **DEPARTMENT OR**
20 **COUNTY BOARD** under item **[(1)](I)** of this [subsection] **PARAGRAPH**, shall be
21 credited to the General Fund.

22 **(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**
23 **COUNTY BOARD, BEFORE THE COUNTY BOARD IS REIMBURSED UNDER**
24 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COUNTY BOARD SHALL PROVIDE**
25 **DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF**
26 **THE AUDIT INCURRED BY THE COUNTY BOARD ARE REASONABLE.**

27 16-306.

28 (a) **(1)** [In this section, "Agency" means the State Retirement Agency.]
29 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR**
30 **COMMUNITY COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE**
31 **EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:**

32 **(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM**
33 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**
34 **PERSONNEL AND PENSIONS ARTICLE; AND**

1 **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**
2 **THAN STATE OR LOCAL AID.**

3 **(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**
4 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC JUNIOR OR**
5 **COMMUNITY COLLEGE SHALL REIMBURSE THE STATE A PRO RATA SHARE OF**
6 **THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S**
7 **SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.**

8 (b) **(1) [The Agency] TO ENSURE THAT THE PUBLIC JUNIOR OR**
9 **COMMUNITY COLLEGE IS PROPERLY REIMBURSING THE STATE AS PROVIDED**
10 **UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION OR, AT THE**
11 **COMMISSION'S REQUEST, A PUBLIC JUNIOR OR COMMUNITY COLLEGE** may at
12 any time examine the records of public junior or community colleges to determine
13 whether the State's payments for retirement contributions for employees of the public
14 junior or community colleges are in accordance with the provisions of Division II of the
15 State Personnel and Pensions Article.

16 **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**
17 **SUBSECTION MAY BE:**

18 **(I) INCLUDED WITH AN EXISTING FINANCIAL ANNUAL**
19 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

20 **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**
21 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**
22 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

23 **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

24 (c) (1) (i) If an examination of the records of a public junior or
25 community college shows that the State has paid more than is required under Division
26 II of the State Personnel and Pensions Article, within 30 days after the date of the
27 notice to the junior or community college of the State overpayment, the junior or
28 community college may appeal the notice of State overpayment to the Secretary of
29 Budget and Management who shall appoint a hearing examiner.

30 (ii) The hearing examiner shall make recommendations to the
31 Secretary of Budget and Management who shall make a final determination regarding
32 the amount, if any, of the State overpayment.

33 (2) If a public junior or community college does not appeal to the
34 Secretary of Budget and Management or if the Secretary of Budget and Management
35 determines that the State is due reimbursement for excess payments, as provided in
36 paragraph (1) of this subsection, at the request of the [Agency] **COMMISSION** the

1 moneys owed shall be deducted from any other State funds that would otherwise be
2 paid to the public junior or community college.

3 (3) For purposes of the Administrative Procedure Act, an appeal taken
4 under this section is not a contested case.

5 (d) (1) Any reimbursements [which result from audits under this section]
6 UNDER SUBSECTION (A) OF THIS SECTION:

7 [(1)] (I) Shall be applied first to THE COST OF ANY AUDIT OR
8 PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO
9 reimburse EITHER the [Agency] COMMISSION OR THE PUBLIC JUNIOR OR
10 COMMUNITY COLLEGE for the expenses of the audits; and

11 [(2)] (II) After reimbursement to the [Agency] COMMISSION OR THE
12 PUBLIC JUNIOR OR COMMUNITY COLLEGE under item [(1)](I) of this [subsection]
13 PARAGRAPH, shall be credited to the General Fund.

14 (2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A
15 PUBLIC JUNIOR OR COMMUNITY COLLEGE, BEFORE THE PUBLIC JUNIOR OR
16 COMMUNITY COLLEGE IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS
17 SUBSECTION, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL PROVIDE
18 DOCUMENTATION TO THE COMMISSION THAT THE INCREMENTAL COSTS OF THE
19 AUDIT INCURRED BY THE PUBLIC JUNIOR OR COMMUNITY COLLEGE ARE
20 REASONABLE.

21 23-504.

22 (a) (1) [In this section, "Agency" means the State Retirement Agency.]
23 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC LIBRARY SHALL
24 REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE
25 BY THE STATE FOR AN EMPLOYEE WHO:

26 (I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM
27 OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE
28 PERSONNEL AND PENSIONS ARTICLE; AND

29 (II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER
30 THAN STATE OR LOCAL AID.

31 (2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN
32 PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC LIBRARY
33 SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT
34 BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A
35 SOURCE OTHER THAN STATE OR LOCAL AID.

1 (b) **(1)** [The Agency] **TO ENSURE THAT EACH PUBLIC LIBRARY IS**
2 **PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF**
3 **THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT’S REQUEST, A**
4 **PUBLIC LIBRARY** may at any time examine the records of public libraries to
5 determine whether the State’s payments for retirement contributions for employees of
6 the public libraries are in accordance with the provisions of Division II of the State
7 Personnel and Pensions Article.

8 **(2)** **AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**
9 **SUBSECTION MAY BE:**

10 **(I)** **INCLUDED WITH AN EXISTING FINANCIAL ANNUAL**
11 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

12 **(II)** **CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**
13 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**
14 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

15 **(III)** **CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

16 (c) (1) (i) If an examination of the records of a public library shows
17 that the State has paid more than is required under Division II of the State Personnel
18 and Pensions Article, within 30 days after the date of the notice to the library of the
19 State overpayment, the public library may appeal the notice of State overpayment to
20 the Secretary of Budget and Management who shall appoint a hearing examiner.

21 (ii) The hearing examiner shall make recommendations to the
22 Secretary of Budget and Management who shall make a final determination regarding
23 the amount, if any, of the State overpayment.

24 (2) If a public library does not appeal to the Secretary of Budget and
25 Management or if the Secretary of Budget and Management determines that the State
26 is due reimbursement for excess payments as provided in paragraph (1) of this
27 subsection, at the request of the Department of Education the moneys owed shall be
28 deducted from any other State funds that would otherwise be paid to the public
29 library.

30 (3) For purposes of the Administrative Procedure Act, an appeal taken
31 under this section is not a contested case.

32 (d) **(1)** Any reimbursements [which result from audits under this section]
33 **UNDER SUBSECTION (A) OF THIS SECTION:**

34 **[(1)] (I)** Shall be applied first to **THE COST OF ANY AUDIT OR**
35 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**

1 reimburse EITHER the [Agency] DEPARTMENT OR THE PUBLIC LIBRARY for the
2 expenses of the audits; and

3 **[(2)] (II)** After reimbursement to the [Agency]DEPARTMENT OR
4 PUBLIC LIBRARY under item [(1)](I) of this [subsection] PARAGRAPH, shall be
5 credited to the General Fund.

6 **(2)** IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A
7 PUBLIC LIBRARY, BEFORE THE PUBLIC LIBRARY IS REIMBURSED UNDER
8 PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC LIBRARY SHALL PROVIDE
9 DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF
10 THE AUDIT INCURRED BY THE PUBLIC LIBRARY ARE REASONABLE.

11 Article – State Personnel and Pensions

12 21–121.

13 **(A)** [Whenever an audit of the records of an educational institution, public
14 library, or school system reveals that the institution, library, or school system owes
15 money to the accumulation fund of the Teachers' Retirement System or the Teachers'
16 Pension System, the State Retirement Agency may collect the delinquent payment as
17 provided under §§ 5–203, 16–306, and 23–504 of the Education Article.]**THE STATE**
18 **RETIREMENT AGENCY MAY AT ANY TIME EXAMINE THE RECORDS OF A**
19 **PARTICIPATING EMPLOYER TO DETERMINE WHETHER THE PAYMENT OF**
20 **BENEFITS TO A PARTICIPANT AND THE PAYMENT OF CONTRIBUTIONS BY A**
21 **PARTICIPATING EMPLOYER OR PARTICIPANT ARE AND WILL BE IN ACCORDANCE**
22 **WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE.**

23 **(B)** WHENEVER AN AUDIT REVEALS THAT THE PAYMENT OF BENEFITS
24 TO A PARTICIPANT OR THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING
25 EMPLOYER OR PARTICIPANT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF
26 DIVISION II OF THIS ARTICLE:

27 **(1)** THE STATE RETIREMENT AGENCY AND PARTICIPATING
28 EMPLOYER SHALL CORRECT THEIR RECORDS; AND

29 **(2) (I)** THE PARTICIPATING EMPLOYER SHALL PAY ANY
30 AMOUNTS OWED TO THE ACCUMULATION FUND OF THE APPROPRIATE STATE
31 SYSTEM; AND

32 **(II)** THE MEMBER CONTRIBUTIONS OWED BY THE
33 PARTICIPANT SHALL BE MADE BY THE PARTICIPANT IN ACCORDANCE WITH §
34 21–312(E) OF THIS TITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2011.